

Title Guaranty Division Board Meeting Minutes

September 13, 2005

Board Members Present:

Walter Murphy
Berneil Preul
Mitchell Taylor
Surasee Rodari
Catherine Hult (by phone)

Staff Members Present:

Loyd Ogle, Title Guaranty Director
Matt White, TGD Deputy Director
Dennis Dietz, IFA Director of Governmental
Affairs & Policy
Tim Jansen, IFA Accountant
Linda Berg, TGD Business
Development Director
James Smith, IFA Deputy Director and Chief
Financial Officer
Mark Thompson, IFA General Counsel
Susan Riedinger,
Administrative Assistant

Others Present:

Grant Dugdale – Attorney General's Office
Dwight Dinkla – Executive Director, Iowa State Bar Association
Troy Skinner – Carney Law Firm
Joe Vignoroli – The Rock Mortgage Services
Bill Price – Des Moines County Abstract Company
William Jahn – Aspelmeier Law Firm
Chris Hoegh – Marion County Title Services
Jim Belker – Mt. Pleasant, IA
John Eisenman – President, Iowa Land Title Association
Dave Erickson – Davis Law Firm
Bob McCloney – United Land Title Company
Sandy McCloney – United Land Title Company
Tim Reilly – Black Hawk County Abstract Company
Dan Cahill – Attorney
Bob Masden – Diamond Realty
Jessica E. Powell, CSR, RPR – Launspach, Lewis, Burns & Kluender, Inc.
Dave Dunakey – Attorney, Black Hawk County Abstract Company (by phone)
John Donohoe – Attorney (by phone)
Tim Reilly – Black Hawk County Abstract Company

Call to Order

Chairman Mitch Taylor called the September 12, 2005, meeting of the Title Guaranty Board of Directors to order at 1:03 p.m.

Review & Approval of Board Meeting Minutes

Motion: On a motion by Mr. Rodari, seconded by Ms. Preul, the Board unanimously approved the June 14, 2005, Board meeting minutes.

Review & Approval of Financial Reports

Mr. Ogle discussed the financials with the Board members. He said IFA set a budget target of \$5 million in revenue. He said Title Guaranty was four percentage points off that target, about \$184,000 short. He said that it was a very good year for Title Guaranty and that this was the second best year ever.

Mr. Ogle said that the new budget targets for the current fiscal year would require Title Guaranty to bring in on average about \$390,000 per month.

Mr. Ogle stated that one of Title Guaranty's goals is to get more certificates issued in the field. He said currently approximately 30 percent is issued in the field and 70 percent is issued in house.

Mr. Jansen recommended to the Board that they transfer \$301,101 to the housing programs.

Motion: On a motion by Mr. Murphy, seconded by Mr. Rodari, the Board unanimously approved the financial report.

Transfer of Funds to IFA's Housing Programs

Mr. Ogle recommended that the amount for transfer be a flat \$300,000.

Motion: On a motion by Ms. Preul, seconded by Ms. Hult, the Board unanimously approved the transfer of \$300,000 to the Iowa Finance Authority's Housing Programs.

Deputy Director's Report

Mr. White gave the claims report. He said that the claims were fairly normal and steady. He said that Title Guaranty has 30 open claim files, and since the last board meeting, of those 30, 10 claim files have been added. He also said that since the last board meeting, Title Guaranty has paid \$390 for one claim and anticipates paying a few other claims soon.

One of the claims Mr. White and Mr. Ogle discussed was for a Title Guaranty certificate that was submitted in which there were two titleholders and only one of the titleholders signed the mortgage. Mr. Ogle said that this involves an issue he wants to approach the Real Estate section of the Bar about because of the resistance of some attorneys about how they reflect things on their title opinions. Mr. White explained that this involved an attorney-issued Title Guaranty certificate that noted two people in title and noted that only one person signed the mortgage. He said that it was accurate in that aspect but it was not accurate in that the certificate binds Title Guaranty to insure a first lien position. He said that sometimes title opinions come in where the bare facts are noted on the opinion but not the ramifications of those facts. Mr. Ogle explained the reason why Title Guaranty has a claim in this case is the lender only had a half interest in the property, and the mortgage was void as to the other half. He said in this case the attorney should have pointed out to the lender that the loan only covers one-half interest in the property.

Mr. White also gave the Mortgage Release Program report. He said that Title Guaranty has received as of the first of this month just under 1,000 requests for mortgage releases since the inception of the program. He said that of those 1,000 requests, about 750 resulted in releases that Title Guaranty has prepared and signed. He also said about 150 of those 1,000 requests resulted in the lender doing the release themselves. Mr. Taylor noted that there are ongoing efforts to educate attorneys, lenders, and real estate agents about the program.

Business Development Director's Report

Ms. Berg delivered the business development report. She said she has two objectives in the marketing department: 1) to rebuild Title Guaranty's market share and 2) to create broader awareness of Title Guaranty and its programs. She said the primary audience is lenders, attorneys, abstractors, and real estate professionals.

Ms. Berg said Title Guaranty was having its first annual conference on September 28. She said that as of September 12, there were 107 registrations.

She also said the first edition of Title Guaranty's newsletter, *On the Move*, was mailed out September 1. She said the second edition is scheduled to be mailed out December 1. She said the newsletter was going out to lenders, abstractors, real estate professionals, and attorneys.

Ms. Berg told the Board that the brochures were being rewritten. She said in the past there was one brochure that gave a general picture of Title Guaranty. She explained that Title Guaranty's audiences have different interests and approaches. Now, separate brochures were being written for each element.

She also discussed continuing education. She said that they just completed a three-hour continuing education course for the Iowa Association of Realtors.

Ms. Berg also said her continued focus is on one-on-one meetings in which she asked for people's business, talked about what Title Guaranty is doing differently and new, developed and maintained relationships, and asked what Title Guaranty has to do to get more business from each of Title Guaranty's participants.

Director's Report

Mr. Ogle gave the director's report. He talked about some of the issues in the industry, including the legality of using Title Guaranty, the decision of some lenders and secondary market participants to forego Title Guaranty or title insurance, and the increased role of mortgage brokers.

Mr. Ogle also discussed the following programs that will be implemented this coming calendar year:

- 1) Nonpurchase product.
- 2) Adjusted premiums.
- 3) Field-issued product.

- 4) Allowing abstractors, settlement services, closing companies to issue the product.
- 5) Closing protection letters.
- 6) Standards in Excellence Program.
- 7) Increased emphasis in marketing, including to those making decisions on whether to use Title Guaranty or title insurance and to homebuyers.

Resolution Clarifying Iowa Administrative Code Chapter 265-9.11(16)

Mr. Ogle requested that the Board clarify Iowa Administrative Code Chapter 265-9.11(16) regarding premiums. The proposed resolution reads as follows:

"Interpretation regarding Administrative Code Chapter 265-9.10(16) fees and premiums

"This rule was enacted to prevent fee-splitting and in no way is this rule intended, nor is it to be construed, to prohibit the Title Guaranty Division from contracting with participants for services."

He read the following language regarding fees to the Board: "No participant in the Title Guaranty program shall charge or receive a portion of the fee for the Guaranty or the fee for any other product or service that is paid to the Division." He said that rule is to prevent fee splitting. He said he did not want that rule to be seen as a way to prevent Title Guaranty from contracting with people in the field for services. He asked the Board to clarify that rule in a way that indicates that nothing is intended to prevent Title Guaranty to contract with participants for services.

Mr. Taylor asked if the Board was obligated to publish notice of intent to make rules, or whether the board was rulemaking. Mr. Ogle informed the Board that in this case they are not rulemaking but simply interpreting and clarifying a rule.

Motion: On a motion by Mr. Murphy, seconded by Mr. Rodari, the Board unanimously approved the resolution.

Waiver Request

Mr. Taylor said that he had a conflict of interest in regard to his request to waive the 40-year tract index. He recused himself from participation in the meeting. Mr. Ogle asked Ms. Preul to chair the meeting.

Mr. Dugdale said that Mr. Ogle and Mr. Taylor asked his advice as to how to handle Mr. Taylor's application for waiver and how to handle the conflict of interest. He said that after reviewing Iowa law, he concluded that under 68(b)(2)(a) all Mr. Taylor had to do was to publicly disclose the existence of the conflict, refrain from participating in discussions with the Board relative to the application, and abstain from voting on anything relative to the application.

Ms. Preul took over the chairing of the meeting. She asked if Mr. Donohoe was present. He was not. Mr. Ogle recommended moving to Mr. Taylor's request for waiver.

Mr. Taylor presented his request for the waiver. He said he tried to disclose everything he could and felt he was held to a higher standard than most people that might apply for a waiver.

Mr. Ogle read both the language from the Iowa Code and from the Iowa Administrative Rules on waiving the 40-year plant. In both sets of language, Mr. Ogle stated that the Board may waive the requirements if it is shown that the requirements pose a hardship to the attorney or abstractor and that the waiver is in the public interest to insure availability of Title Guaranty throughout the state.

Mr. Erickson spoke on behalf of Mr. Taylor. He said he found it to be beneficial and in the public's interest to have competition in any county regarding abstracting. He said he thought it would be in the public interest to allow competition.

Mr. Taylor asked Mr. Erickson his opinion with respect to the hardship issue and the cost of preparing a 40-year plant. Mr. Erickson replied that it was not in his expertise.

Mr. Dinkla spoke on behalf of Mr. Taylor. He referred the Board to the packet of letters in support of Mr. Taylor's application for waiver. He said many of the attorneys who wrote are members of the Bar Association, and some even sit on the governing board.

Mr. Taylor referred the Board to his packet of information in regard to his application, including 87 letters of support from lenders, real estate agents, attorneys, auctioneers, and so on. Mr. Taylor also noted his prior ownership of an abstract company. He said he signed a 10-year covenant not to compete and said he would not be able to abstract in Des Moines County until January 1, 2006.

Mr. Taylor indicated that he felt he should be held to a higher standard as chairman of the Title Guaranty Board. He said that Des Moines County is the largest county in Iowa that has only one abstractor. He said that was the argument used by Mr. Dunakey at the time of his application, when Black Hawk County was the largest county with only one abstractor.

Mr. Taylor went into the costs he could incur if he had to develop a 40-year plant. He said the cost for copying documents from 1965 to 1976 would be \$96,250. He said that the records from 1976 to 1996 were put on microfiche, and buying those would cost \$700,000. He said that from 1996 on the recorder started scanning documents, and the recorder has assured him that they can enter into an electronic sharing agreement. He estimated that it would take him approximately \$800,000 to get the documents to build a plant. He also said he employed a computer consultant who estimated it would cost approximately \$1 million to prepare a 40-year marketable plant. He asked the Board to consider that \$1 million to be one of his hardships.

Mr. Dunakey phoned in supporting Mr. Taylor's application. Mr. Dunakey spoke of two things in considering the hardship test: 1) The cost of building a title plant and 2) a direct search versus the tract index. Mr. Dunakey brought up three myths regarding waivers: 1) It is a myth that one can build a title plant; 2) it is a myth that allowing someone to have a waiver and do direct searches will create unfair competition; and 3)

it is a myth that there is anything in a title plant that makes it better than a direct search. He also discussed the business ramifications of having only one abstractor in a county. He requested that the Board grant the waiver in the public interest.

Mr. Taylor said his application was the exact, mirror application Mr. Dunakey's was and gave him credit for his arguments. He said his firm has lost real estate closings and he believes that he is being taken out of the market by the superstore the abstract company is creating. He said he wants to be at the same level that Des Moines County Abstract Company is, and he has to be able to abstract to do that.

Mr. Taylor also noted that the Board never defined the term *hardship* when they set up their rules, and that might be something to think about in the future.

Mr. Taylor said he solicited a letter from Mr. White, the claims representative at Title Guaranty. He said it is Mr. White's opinion that there are no differences in claims experiences between those abstractors that search the county records directly and those abstractors that use their plants.

Mr. Taylor explained that it was illogical to prepare a plant in Des Moines County because their county recorder is ahead of the times. He said that since 1992 she has had an electronic index so that he can search the documents by grantor, grantee, and legal description. He said he thought it is unique that the index goes that far back. He noted that a company called Midland Title Company that requests only a 10-year search, and all of that can be done from the public records electronically, through the government-created base. He said his opponent, as best as he can see, is an owner of Midland Title Company.

Mr. Taylor spoke on the public interest. He said that he has spoken with Mr. Price from Des Moines County Abstract Company in regard to competition. He said their position is that competition is in the best interest. He said fair competition is what they are interested in, and fair is that Mr. Taylor has to invest the \$1 million in the plant.

Mr. Donohoe patched into the meeting. Ms. Preul explained to him that they were working on another waiver request and asked if they can call back.

The Board took a break at 2:33 p.m. and reconvened at 2:43 p.m.

Mr. Taylor said one of his hardships was in getting abstracts back to do the final paperwork. He stated that when an original opinion was done and a supplemental was never done, Title Guaranty is losing premiums.

Mr. Taylor said Mr. White presented to him the creation of an entity called Midland Title Company LLC that is competing with Title Guaranty. He said he investigated and found more than a 25 percent leak in their market. He said in Des Moines County the Des Moines County Abstract Company is participating in that. He said the owner of Des Moines County Abstract Company declares himself to be an owner of Midland Title Company. He presented an affidavit from Heather Sanders, who borrowed \$30,600 to buy a home. He said she was charged a closing fee of \$300. He said she was charged

\$310 by Midland Title for title insurance, and he said that was the leakage. He said the owner of Des Moines County Abstract Company is directing his title insurance to non-Title Guaranty companies of which he is an owner. He said it would have cost less than \$100 to use Title Guaranty.

Mr. Taylor also noted an affidavit signed by Ron Beckman, who wants competition. Mr. Taylor said Mr. Beckman was involved in a transaction in which it took four weeks to get the abstract back for a 12-year search. Mr. Taylor said he could have done a search in less than 48 hours.

Mr. Taylor presented an affidavit by a bank president that had parts blackened out. He said the bank president called back and asked not to be involved.

Mr. Taylor said another hardship was his health. He said he had autoimmune inner ear disease and almost lost his hearing. He said he did not know how much longer he can practice law.

Mr. Masden spoke in support of Mr. Taylor's application. He said he believed it would be beneficial in the public's interest to have competition.

Mr. Cahill spoke in support of Mr. Taylor's application. He said in Des Moines County there is no competition and said that if one has a monopoly, one can control the situation and cost. He said that is one of the problems they have in Des Moines County. He said that since Mr. Taylor sold his abstract company, costs of abstracting have gone up considerably. He said he looks at this as a consumer issue. He stated that Des Moines County residents deserve another abstractor. He said their prices will go down, their continuations will speed up, and people will write their Title Guaranty or title insurance through Title Guaranty so that everyone benefits from all the programs that Title Guaranty funds.

Mr. Taylor referred to a letter he wrote to Mr. Price on July 25 asking if there was an abstract for Lot 50 in Woodsman's First Addition. He said in response to that letter, he received a voice mail from Mr. Price saying there was never an abstract made for the lot, so there is not one to pull. He said Mr. Price said they would probably have the abstract out sometime in August. Mr. Taylor said the brand-new abstract came faster than he expected. He said the abstract cost him \$835. Mr. Taylor said he realized the day of this meeting that this property had a foreclosure on it, and his client was buying the property from the bank. He said the bank did some title work on it. Mr. Taylor said he went back to his file and found out that Green Tree's mortgage counsel presented a fee order for \$350 for abstracting. Mr. Taylor then passed out an exhibit that he said shows that the Des Moines County Abstract Company did a report on September 23, 2004, by Lee Anderson. Mr. Taylor said the title work had been done and was sitting on their shelf because they created the original abstract back in the 1970s. He said that was the example of the increase in costs.

Mr. Becker, Mr. Taylor's former abstract partner, spoke in support of Mr. Taylor. He said Mr. Taylor had experience in abstracting and was very thorough in his work.

Mr. Taylor said that pressure was put on some of his supporters to retract part of their statements. He said he was disappointed with Mr. Jahn that he had any communication with the Board. Mr. Taylor said Mr. Jahn copied all of the Board with cc's and did not send him a copy as chairman of the Board. Mr. Taylor said with the exception of one fax and FedEx he sent to Ms. Hult he had no communication with the Board because he did not want to taint them. Mr. Taylor said he was attacked professionally.

Mr. Jahn addressed the Board on behalf of his client, Des Moines County Abstract Company. Mr. Jahn said he took exception to some of the things Mr. Taylor said about his response to the Board. He said he tried to focus on the issues of Iowa Code Section 16.91(5) regarding the hardship and public interest arguments in their response. He said he forwarded his response to the Board members so they could have an opportunity to review their response. He said the reason he did not send a response to Mr. Taylor because he understood from the attorney general's office that he was not going to be a member of the Board considering the issues regarding his application.

Mr. Jahn said he did not receive the packet entitled "Letters of Interest..." and some of the affidavits until this meeting. He said he was not sure if that represented a problem under Iowa Code Chapter 17A. He said he understood this was final agency action to occur, and he said he believed this was a contested case. He said he had a request in for discovery with Title Guaranty. He said he was concerned that he did not have an opportunity to review the material. Mr. Dugdale replied that this was not a contested case proceeding under 17A and that this was other agency action.

Mr. Jahn said his client has no problem with competition. He said that to claim Des Moines County Abstract Company has a monopoly or that they have some kind of untoward hold on the market is not a factually or legally accurate statement.

Mr. Jahn said that his objection centers solely on the fact that if Mr. Taylor were to be given this waiver, he would save anywhere from \$100,000 to \$1 million in building a title plant. Mr. Jahn explained that his client has built and maintained a title plant over the years. He said that in the past five years, Des Moines County Abstract Company has spent approximately \$250,000 to update the hardware and software, for copying charges, for labor, etc. to maintain the statutorily mandated 40-year title plant. He said to allow a competitor to start a new abstract company in Des Moines County, Iowa, and save a statutorily mandated fixed cost is a distinct competitive disadvantage to the abstract company.

Mr. Jahn said he was confused at to Mr. Taylor's costs. Mr. Jahn said that the written documentation he received showed the cost as more than \$100,000, but he heard from Mr. Taylor during the meeting that the cost has increased to \$750,000 or \$800,000. Mr. Jahn said either way Mr. Taylor or his law firm has to present evidence that he or his law firm is not able to afford that cost. Mr. Jahn said that part of Mr. Taylor's application indicates that his law firm is seeking the waiver, and part appears to be an individual application, so he was unsure which it is. Mr. Jahn said if his law firm was applying, the cost to the law firm of \$100,000 to build the title plant is not on its face a hardship.

Mr. Jahn said Mr. Taylor has submitted several affidavits and letters of support. Mr. Jahn said Mr. Taylor indicated either he or his client pressured some of the bankers and lenders to change their position regarding their letters of support. Mr. Jahn said he took exception to that. Mr. Jahn said that Mr. Taylor was not telling people that 1) Mr. Taylor is a Title Guaranty Board member and 2) the nature of the costs of putting together a 40-year title plant. Mr. Jahn said that some of the people who signed the affidavit did not understand the waiver issue and did not support the idea of one person or entity being given a competitive advantage. He said these people then signed another affidavit stating they were not advised of the waiver issue.

Mr. Jahn said the argument was made that the 40-year title plant was no longer the logical way to proceed with abstracts. He said this argument is a policy issue best presented to the Iowa Legislature and not to this Board.

Mr. Jahn noted Mr. Taylor's arguments regarding turnaround time on abstracts. He said that in dealing with the Des Moines County Abstract Company, if one requests a certain date by which the abstract needs to be updated, 90 percent of the time it will be done by that date. Mr. Jahn referred to his exhibit in which ReMax states that Des Moines Abstract Company bends over backwards to provide them with fast, efficient service.

Mr. Jahn said Mr. Taylor indicated that he procured the support of the Des Moines County Bar Association regarding his application. Mr. Jahn said he was not aware that any notice had been provided to the bar association.

Mr. Jahn turned to the public interest argument. He said that abstract customers can currently get Title Guaranty participating abstractor services in Des Moines County. He said there is no void that needs to be filled there.

Mr. Jahn said that he found no evidence that Mr. Taylor will be able to provide a more cost-effective or efficient service in the abstracting field.

Mr. Price addressed the Board. He said some of the information he did not see until just a little while ago. He said Des Moines County Abstract Company has no problems with competition. He said he welcomes Mr. Taylor in the abstracting business as of the first of the year as long as it is fair competition and that they are under the same rules. He said Mr. Taylor made a statement saying they stop their title plant. Mr. Price said that is not an accurate statement. He said he continues to index their records daily.

Mr. Price also addressed the cost of building a title plant. He said he visited with their county recorder when all of this came about. He said her estimation to him to buy 40 years worth of records was approximately \$250,000. He said a new plant was built in Linn County, which is a bigger county, at a cost of \$1 million. He also noted Mr. McCloney had a title plant built, as well as one in Johnson County, one in Marion County by Mr. Hoegh, and several others. He said building a plant is not as hard as everyone would like to think, especially in this day and age with technology.

Mr. Price argued against a direct search of the records. He passed out some letters from Richard Bordwell. He said Mr. Bordwell was involved in a litigation case in Henry County.

He said the situation involved three city lots and a number of discrepancies. He said he disagreed with a direct search being a better search because there is no notice of interloping title. He also noted that there are a number of errors in their county system, which is another reason he is not for a direct search of the records.

Mr. Price discussed the benefit of competition. Mr. Price noted that he bought Mr. Taylor's company in 1995. He said Mr. Taylor's company was able to compete with his for 29 years before Mr. Taylor bought that company, and the company successfully competed with Mr. Price's company without the benefit of Title Guaranty.

Mr. Price brought up the cost of abstracting. He presented documentation regarding abstract pricing. He said his abstracting services have gone up from what he charged 10 years ago, with the new costs, recorder's system, and so forth.

Mr. Price discussed the abstract of Lot 50 in Woodsman's First Addition mentioned earlier by Mr. Taylor. Mr. Price said he believed Mr. Taylor requested the abstract in two to three weeks, which is why he said he would have it sometime in August. He said his secretary told him that they never made an abstract on that property. He said there was an abstract company in business at that time, and they could have made the original abstract. Mr. Price said they do not do abstract work for Green Tree anymore. He said they did that work for a foreclosure attorney out of town who did not want an abstract. Mr. Price said the attorney simply ordered an ownership report on the title. He said for that all they do is go back to the last deed and show from the deed forward. He said it is in a letter form, not abstracted. He said there were 247 entries in that abstract and he did not think they were out of line on what they charged.

In regard to the Heather Sanders matter, Mr. Price said it was kicked to his office, and it fell through about four or five times.

Mr. Price said he felt Midland Title is an issue on Mr. Taylor's hardship.

Mr. Price returned to the Heather Sanders matter. He said the \$310 was a one-time deal because it fell through so many times with different lenders. He said they had to reissue different commitments every time, and they are charged for them. He said as for the \$500 attorney fees, Southeast Iowa Escrow Company has never collected attorney's fees. He said their computer automatically kicks Southeast Iowa Escrow Company in that column, and that is a mistake. He said if they charged Ms. Sanders \$500 she should not have been charged, he would be happy to refund that. As for the \$250 abstracting fee, he said that to say that's a supplemental is not fair because they do day-of-closing searches and buyer's searches, they record all the documents from the abstract companies, and they do a final abstract.

Mr. Price also addressed the Ron Beckman matter. He said he tried to meet their customers' demands since he took over the company. He said without being able to look at that deal, he is not sure what happened.

Mr. Price said he heard a lot of talk about their escrow company and the closings they perform. He said their closing company was customer driven because the attorneys in

town would not do closings for some of the mortgage brokers. He said they could sit back as an abstract company, say they cannot do the closings, and tell the brokers that they would have to go somewhere else. He said eventually the brokers will use out-of-state title insurance companies. He said they see a huge bleed on that in our state, in which people are driving to the courthouse, searching the records, and driving off. Mr. Price noted that they have competition from anyone who comes in and searches records.

Mr. Price said he would not discuss the ramifications on his customers in regard to Mr. Taylor's application.

Mr. Eisenman addressed the Board on two parts. The first part, he said, was for the Iowa Land Title Association (ILTA). He noted the ILTA's letter registering their opposition to the request. He reread a couple of paragraphs from that letter. He said Mr. Taylor has no inherent right to compete unless he abides by the same rules as his competitor. He said he also disagreed with the public interest part of Mr. Taylor's argument. He said the association does not believe that abandoning the plant requirements set forth in Section 16.91 in order for Mr. Taylor to garner a small segment of a market already being adequately served by a participating abstractor would be in the public interest at all.

The second part of Mr. Eisenman's address was as a co-owner of Midland Title. He said within two months of the formation of Midland Title he talked to Mr. Ogle and Mr. White at a regional meeting and told them about the enterprise. He said Midland Title has no bearing on Mr. Taylor's request. He said Midland Title was created from three main points: abstractors and closers cannot get closing protection letters from Title Guaranty, Title Guaranty tends to be uncompetitive in refinance transactions, and abstractors are shut out from participating financially in the preparation of Title Guaranty policies. He said Midland Title is an attempt to bring in revenues that have been going out of the borders of Iowa and bring them in ultimately to Iowa citizens so they can pay state income tax.

The Board took a break at 4:10 p.m. and reconvened at 4:18 p.m.

Mr. McCloney addressed the Board. He said that in 1993 or 1994 he requested a waiver from Title Guaranty and was denied. He said he came again in 1998, and at that point he was within six to eight months of having his 40-year plant. He said he was denied again. He said in 2000 he sent his application in and was approved. He said he did have his plant and does to this day. He said it is not as expensive as Mr. Taylor is trying to say it is. He said he had his plant done for \$100,000, and he spends about \$25,000 to \$30,000 per year to keep his plant up to date.

Mr. McCloney asked Mr. White what he would require if he received a title opinion from an attorney that had a conflicting mortgage. Mr. White said he would defer to the attorney.

Mr. McCloney said he did not believe there is a hardship. He said he does not agree with waivers and that everyone should be treated equally.

Mr. Hoegh addressed the Board. He said that another entity built a title plant in 1998. He said within a year they had a title plant built. He said they did their homework and did not ask for a waiver. He said they were granted membership as a participating abstractor. He said they built plants in Story and Boone counties as well. He said building plants is being done and it is not a hardship.

Mr. Taylor said this was a sensitive issue and expressed his appreciation for the way everyone acted. He said his application has the support of the state bar and the county bar, and the resistance of the ILTA. He said he hoped he would be treated, and the Board will vote similarly, the same as in the Dunakey and Klatt application because it is the same application. Mr. Taylor also addressed Mr. Jahn's comments that there were documents that he had not seen. Mr. Taylor said that had nothing to do with him, and he sent everything he could. He said he could only reply that there were a lot of documents that they got to see that he did not. However, he said he trusted the documents implicitly.

Mr. Taylor noted that Mr. Price said when record searches are done, some things do not come up. Mr. Taylor said his question to Mr. Price is, what has Mr. Price done to tell the recorder that they need to correct their official record and tract system? Mr. Taylor said Mr. Price has a vested interest to not correct the official record.

Mr. Taylor said Dunakey and Klatt relied on a case, *Compano v. Jones*, a 1978 Supreme Court decision which reaffirms that the law in the State of Iowa for more than 140 years is that it is only impacting a document that people have constructive notice if it is recorded and indexed correctly. He said the documents the recorder's office might have or have made errors on are not constructive notice to the community. He said the plant hopefully creates a good product, but the only standard is the recorded documents of record. He said when he goes to the courthouse to search, that's the only record that counts.

Mr. Taylor said he disagreed with the fact that Midland Title is not valid. He said what he is going to participate with Title Guaranty. He said he's been appointed twice to the Board, he has been involved in consumer litigation in which he's tracked down predatory lenders, and he has filed numerous lawsuits on behalf of people.

Mr. Ogle addressed the issue of materials not being provided. He said there was a miscommunication on the part of his staff that packets sent to the Board which included all the supportive materials was supposed to go to all. He apologized that not all the documents were sent out. He said that he spoke with Mr. Dugdale and Mr. Thompson, and in consideration of that fact, they offered to continue this hearing to give the other side the opportunity to respond. Mr. Jahn said they prefer to resolve it today. In regard to Mr. Taylor's not receiving additional documents, Mr. Taylor said he felt the same way.

Ms. Hult said from what she's heard, Mr. Taylor satisfied the hardship and public interest requirements.

Mr. Murphy said he took exception to the statement that if there is only one abstractor in a county, they tend to bury their mistakes. He said that was wrong. He said the goal of Title Guaranty is to obtain the most reliable title evidence available to issue a Title Guaranty policy. He said to that end the enabling legislation required each participating abstractor to own, lease, maintain, and use an up-to-date title plant, including tract indices. He said this was deemed to be in the public interest and that of Title Guaranty. He said Title Guaranty must demand the best title evidence to guarantee their titles. He said an exception to this was made to counties which did not have an existing title plant to insure Title Guaranty presence in all counties. He said further exception was granted to attorneys who had been previously making abstracts prior to November 12, 1986. He said the intent was to allow those persons making abstracts to continue to do so until they retired or died with the expectation that a tract index would be available at some future time. He said there was never the intent or expectation to allow the practice of searching directly through the county records to extend forever. He said it was agreed by all that the title plant was far more reliable and timely. He said Mr. Taylor, in his application, states that he has no intention to develop a 40-year tract index. He said this is clearly in opposition to Title Guaranty rules. Mr. Murphy said that Mr. Taylor's application states that it is impossible to create and maintain a title plant. He said Des Moines County has a population of about 42,000. He said within the last 10 years new plants have been built in Madison County, population 14,500, Jefferson County, population 16,700, Boone County, population 26,300, Story County, population 75,000, and Republic Abstract Company in Linn County, population 184,000. He said computers and scanners have allowed companies to build plants, and if these people can build a plant, a plant can be built in Des Moines County to comply with Title Guaranty rules. He said the benefits to a plant are that all items pertaining to a specific parcel of real estate are posted to the tract index each day. He said it does not matter what name is indexed in the grantor/grantee index in the recorder's office. He said the benefit to the public and to Title Guaranty is that all instruments pertaining to the title of a specific parcel can be retrieved very timely, condensed to abstract form in short order, and be delivered to the attorney for examination. Mr. Murphy said that in the supporting documents there are few examples of slow service from the existing company. He said there are more instances where good service by the existing company is cited. He said there was no evidence presented which states prices would be lowered by an additional company's presence—only a wish that this would be the result. Mr. Murphy said the 40-year title plant is the only quality control feature Title Guaranty has.

Ms. Hult said in response that she has had abstracting done by Des Moines County Abstract Company and has had problems with time delay. She said she had never had problems with their abstracts. She said they do an excellent job and that they have caught things that other abstracting companies miss. She said it would be in the public interest to have another servicer available when they are overwhelmed with work so that the public has another place to go in order to not have that time delay. She said that when looking at hardship there are more factors presented than just the cost of creating the title plant. She noted that Mr. Taylor went into some health and business issues. She said that the Board needs to look at what is hardship above and beyond the creation of the title plant. She said she believed Mr. Taylor showed factors in his favor. She said she felt the hardship and public interest have been met.

Ms. Preul asked Mr. Ogle to read the Iowa Code section on waiving the 40-year plant requirement, which he did.

Motion: On a motion by Ms. Hult, seconded by Mr. Rodari, the Board granted Mr. Taylor's application for waiver by a 3-1 vote by roll call. Aye: Ms. Preul, Ms. Hult, Mr. Rodari. Nay: Mr. Murphy.

Mr. Ogle said in light of the time, he recommended that they defer action on Mr. Donohoe's waiver until the next Board meeting.

Next Meeting Date and Time

The next meeting date will be December 6th, 2005, at 10:30 a.m.

Adjournment

Motion: On a motion by Ms. Preul, seconded by Ms. Hult, the Board unanimously voted to adjourn at 4:49 p.m.

Dated this 6th day of December, 2005,

Respectively submitted:

Approved as to form:

Loyd W. Ogle, Director
Title Guaranty Division

Mitch Taylor, Chair
Title Guaranty Division